

January 24, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

WASHINGTON PUBLIC POWER SUPPLY SYSTEM

(WPPSS Nuclear Project No. 1)

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Docket No. 50-460 JL

NRC STAFF RESPONSE TO COALITION FOR
SAFE POWER SUPPLEMENT TO REQUEST FOR
HEARING AND PETITION FOR LEAVE TO INTERVENE

I. INTRODUCTION

On September 10, 1982, the Coalition for Safe Power (CFSP) filed a timely "Request for Hearing and Petition for Leave to Intervene", pursuant to 10 CFR § 2.714, in response to a notice of opportunity for hearing in the Federal Register (47 Fed. Reg. 35567, August 16, 1982) regarding the Washington Public Power Supply System (WPPSS) operating license application for WPPSS Nuclear Project No. 1 (WNP-1). The Staff did not oppose the petition provided it was amended to cure certain deficiencies. See NRC Staff Response, dated September 30, 1982. By Order dated October 13, 1982, the Board granted CFSP leave to amend its petition. On November 2, 1982, CFSP filed an amendment to its petition and the Staff filed its response on November 17, 1982. By orders dated December 1 and December 15, 1982, the Board gave CFSP leave to file a supplement to its request for hearing containing a list of specific contentions, "Coalition for Safe Power Supplement to Request for Hearing

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and Petition for Leave to Intervene", filed January 10, 1983 ("CFSP Supplement"). The Staff response to the CFSP Supplement is set forth below.

II. DISCUSSION

A. Legal Principles Governing the Statement and Admission of Contentions

Contentions may be admitted in a Commission licensing proceeding if they fall within the scope of issues set forth in the Federal Register notice of opportunity for hearing and applicable Commission case law. See e.g., Northern States Power Co. (Prairie Island, Unit Nos. 1 and 2), ALAB-197, 6 AEC 188, 194 (1973), affirmed, BPI v. Atomic Energy Commission, 502 F.2d 424, 429 (D.C. Cir. 1974); Duquesne Light Co. (Beaver Valley, Unit No. 1), ALAB-109, 6 AEC 243, 245 (1973); Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974).

Pursuant to 10 CFR § 2.714(b), Intervenor's are required to file "a list of contentions which petitioner seeks to have litigated in the matter, and the bases for each contention set forth with reasonable specificity." An Intervenor who fails to file at least one contention which satisfies the requirements of § 2.714(b) will not be permitted to participate as a party. A contention must be rejected where:

- (1) It constitutes an attack on applicable statutory requirements;
- (2) It challenges the basic structures of the Commission's regulatory process or is an attack on the regulations;
- (3) It is nothing more than a generalization regarding the Intervenor's view of what applicable policies ought to be;
- (4) It seeks to raise an issue which is not proper for adjudication in the proceeding or does not apply to the facility in question; or

(5) It seeks to raise an issue which is not concrete or litigable. Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974). The purpose of the basis requirement of 10 C.F.R. § 2.714(b) is (a) to assure that the matter sought to be put into question does not suffer from any of the infirmities set forth in Peach Bottom, supra, at 20-21, (b) to establish sufficient foundation to warrant further inquiry into the subject matter and (c) to put the other parties sufficiently on notice "so that they will know at least generally what they will have to defend against or oppose." Peach Bottom, supra, at 20.

At the early stages of a proceeding initial contentions need only identify the reasons for each contention. See, Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 548 (1980). In addition, the basis stated for each contention need not "detail the evidence which will be offered in support of each contention." Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), 6 AEC 423, 426 (1973). Accordingly, in examining contentions and the basis therefore, a licensing board may not reach the merits of contentions. Id.; Peach Bottom, supra at 20. Nevertheless, the basis for contentions must be sufficiently detailed and specific (a) to demonstrate that the issues raised are admissible and further inquiry into the matter is warranted and (b) to put the parties on notice as to what they will have to defend against or oppose. This is particularly important at the operating license stage, where a hearing is not mandatory, in order to assure that an asserted contention raises an issue which clearly is open to adjudication. Cincinnati Gas & Electric Co.

(William H. Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8, 12 (1976); Gulf States Utilities Co. (River Bend, Units 1 and 2), ALAB-183, 7 AEC 222, 226 (1974); River Bend, ALAB-444, 6 NRC 760, 768-69 (1977).

In addition, a board is not authorized "to admit conditionally for any reason, a contention that falls short of meeting the specificity requirements." Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC _____ (August 19, 1982), Slip op. at 11. The NRC's Rules of Practice do not permit "the filing of a vague, unparticularized contention, followed by an endeavor to flesh it out through discovery against the applicant or Staff." Id. slip op. at 13.

Finally, a licensing board has no duty to recast contentions offered by a petitioner to remedy the infirmities of the type described in Peach Bottom, supra, for which they may be rejected, in order to make inadmissible contentions meet the requirements of 10 CFR § 2.714. Commonwealth Edison Co. (Zion Station Units 1 and 2), ALAB-226, 8 AEC 381, 406 (1974). Should a Board nevertheless elect to rewrite a petitioner's inadmissible contentions so as to eliminate the infirmities which render the contentions inadmissible, the scope of the reworded contentions may be made no broader than the bases that were previously provided by the petitioner for the inadmissible contentions. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-675, 15 NRC 1105, 1114-16 (1982).

B. CFSP Contentions

CFSP Contention 1

Petitioner contends that there is no reasonable assurance that WNP-1 will be substantially completed, in a timely fashion as required by 10 CFR Part 2, Appendix A, Section VIII(b)(1) and 10 CFR 50.55(b)&(d)

which provide that an application for an Operating License will be filed "at or about the time of completion of the construction ... of the facility" and that a license may be issued when there is "reasonable assurance that the construction of the facility will be substantially completed, on a timely basis."

The Staff objects to the admission of CFSP Contention 1. CFSP Contention 20 also raises the issue of completion on a timely basis. That part of CFSP Contention 20 is also inadmissible, for the same reasons as discussed herein.

The contention refers to the requirements of 10 CFR § 50.55(b), which pertains to the extension of the completion date for a construction permit. Thus, it is not a proper issue for an operating license hearing. See 10 CFR Part 2, Appendix A, Section VIII(b). Similarly, the contention references 10 CFR § 50.55(d), which provides that an application for an operating license will be filed "at or about the time of completion of construction ... of the facility." This section does not present a litigable issue in this proceeding. The fact that an application for an operating license should be filed at about the time construction is complete simply has no bearing on whether the plant will be completed safely in conformance with the Act and regulations. Moreover, the thrust of Section VIII(b)(1) is not that the facility must be "substantially completed, on a timely basis," but rather that it be "substantially completed, on a timely basis, in conformity with the construction permit and the application as amended, the provisions of the Act, and the rules and regulations of the Commission." (Emphasis added.) In CFSP Contention 1, Petitioner has not identified any specific nonconformance with any provision of the construction permit, the Act or the rules and regulations. If Applicant fails to complete the facility on a timely basis,

its construction permit, if not extended, will expire and there will be nothing further to litigate. Clearly, Contention 1 does not raise an issue that is suitable for litigation and it is inadmissible.

CFSP Contention 2

Petitioner contends that Applicant has neither adequately nor correctly assessed the somatic, teratogenic and genetic effects of ionizing radiation which will be released by WNP-1 during normal, transient and accident conditions and thus underestimates the human cost of the project in the cost-benefit analysis required by 10 CFR 51.21, 51.20(b)&(c) and 51.23(c).

The Staff objects to the admission of CFSP Contention 2. It neither alleges nor provides a basis for an allegation that the errors, if indeed such exist, in assessment are sufficient to tilt the cost-benefit balance against issuance of the operating license. Accordingly, the contention presents no litigable issue.

CFSP Contention 3

Petitioner contends that Applicant should be required to conduct an evaluation of and provide protection from the potential problems posed by Electromagnetic Pulse (EMP) to meet the requirements of 10 CFR 50.40(c). Licensing WNP-1 without protection from EMP unreasonably jeopardizes the common defense and safety by 1) impairing defense responses which might release EMP over the State of Washington and thereby cause a major release of radiation from WNP-1 and 2) acting as a potentially large source of lethal radioactivity which might be released by means of an EMP trigger which could be activated by any power, friend or foe, able to deliver a nuclear device over the U.S. 3) placing the U.S. population hostage to threats of EMP attack against WNP-1 and 4) placing the people of Washington State at risk of major peacetime loss for which no compensation can be expected.

This contention is specifically barred by the terms of 10 CFR § 50.13. Under that section, an applicant is not required to provide for

design features or take other measures for the specific purpose of protecting against enemy attacks or the use or deployment of weapons incident to U.S. defense activities. Section 50.13 states:

An applicant for a license to construct and operate a production or utilization facility, or for an amendment to such license, is not required to provide for design features or other measures for the specific purpose of protection against the effects of (a) attacks and destructive acts, including sabotage, directed against the facility by an enemy of the United States, whether a foreign government or other person, or (b) use or deployment of weapons incident to U.S. defense activities.

This regulation has withstood a challenge in federal court. Siege' v. Atomic Energy Commission, 400 F.2d 778 (D.C. Cir. 1968).

CFSP's Contention 3 constitutes a challenge to this regulation. The Commission's regulations may only be challenged in accordance with the requirements set forth in 10 CFR §2.758(b).^{1/} CFSP has not shown any special circumstances involving the WNP-1 facility which would demonstrate that it is necessary to consider EMP. The only way for CFSP to challenge §50.13 of the Commission's regulations is by meeting the requirements of §2.758(b). Since CFSP has failed to do so, this contention must be rejected.

Petitioner offers a series of thinly veiled attempts to get around the constrictions of § 50.13, none of which succeed. Consideration of

^{1/} 10 CFR §2.758(b) states in pertinent part:

"... The sole ground for a petition for waiver or exception shall be that special circumstances with respect to the subject matter of the particular proceeding are such that application of the rule or regulation (or provision thereof) would not serve the purposes for which the rule or regulation was adopted."

item (1) as set forth in CFSP Contention 3, "impairing defense responses which might release EMP over the State of Washington", is barred by § 50.13(b) because such defense responses would involve deployment of weapons by the United States. The basis offered (scenario #1) also involves U.S. defense responses and is similarly barred. A similar contention was raised in Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-42, 14 NRC 842 (1981). The Perry board found that "[intervenor's] example, involving a missile silo accident, flows from the deployment of weapons by the United States. Hence, that risk is explicitly barred from consideration by § 50.13." 14 NRC at 845.

Item (2) of the contention is barred by § 50.13(a). Scenario #4, contained in the basis in support of item 2, postulates two allies of the U.S. who engage in nuclear war causing EMP problems in the U.S. This scenario is precluded by § 50.13 because explosions caused by such warfare would be a destructive act "directed against the facility" by an enemy in an objective sense. See Perry, supra, at 844:

If a nation fires a nuclear device which causes electromagnetic pulses over the United States, that nation is responsible for the result. By that hostile act, the nation becomes an enemy of the United States and is responsible for direct or indirect consequences resulting from its use of a nuclear weapon. If that weapon damages the control system at Perry, then the nation firing it is responsible for that consequence and we would consider the attack to have been "directed against the facility", as well as against all other targets it destroys through blast, pulses or other foreseeable physical consequences of its act.

In scenario #5 of the basis, a French satellite, designed to produce EMP in time of possible war, accidentally detonates over the U.S. Here, Petitioner has hypothecated a matter which is speculative in the extreme

and has provided no basis for believing it is a plausible scenario. As such, it is also barred by 50.13. See Perry, supra, at 845.

Item (3) of CFSP Contention 3, and scenarios #2 and #3, also involving threats of EMP, are clearly intended to be exempt from design analysis when the underlying events themselves, "attacks and destructive acts..." are themselves exempt under 50.13(a).

Item (4) of CFSP Contention 3, placing the people of Washington at risk of a major peacetime loss, is also precluded by § 50.13 as Petitioner has not come forward with any plausible scenario not barred by § 50.13.

Moreover, at the direction of the Commission, the Staff has conducted an investigation of the effects of EMP on nuclear power plants. See SECY-81-641, November 5, 1981. The objective of the Staff investigation is to provide the Commission with a basis for considering the need for amending Commission regulations to include design requirements for the protection against EMP. Id. at 2. A Commission paper is being prepared, and is expected to be presented to the Commission for its consideration in March 1983. However, to date, the present regulation has not been changed, and thus this issue is not appropriate for consideration in this proceeding.

CFSP Contention 4

Petitioner contends that Applicant has not provided sufficient information to show that WNP-1 can operate without hazard to the public health and safety in the event of an ash eruption of the Mount St. Helens, or other active, volcano as required by Appendix A of Part 50, 10 CFR.

The Staff does not object to the admission of CFPS Contention 4, provided the scope of the contention is limited to the issue stated in the basis supporting the contention. That issue is: (1) whether Applicant has provided reasonable assurance that volcanic ash will not disable safety systems and equipment at WNP-1. The wording of the contention and the basis given meet the specificity requirement of 10 CFR § 2.714.

CFSP Contention 5

Petitioner contends that Applicant will not, and, in fact, does not have the ability to, implement a QA/QC program which will function as required by 10 CFR Part 50 Appendix A, GDC 1, 10 CFR 50.40 and Section VIII(2)&(3) of Appendix A to Part 2 to assure public health and safety. Moreover, Applicant has repeatedly violated 10 CFR 50.55(e)(2)(i) in not reporting the numerous breakdowns in its QA/QC program.

The Staff opposes the admission of this contention because neither the contention nor the bases meet the specificity requirements of 10 CFR § 2.714. An admissible QA contention must show arguable basis for an assertion that QA defects have resulted in unsafe construction. Petitioner has made no such showing.

The bases in support of CFSP Contention 5 concern alleged failures in Applicant's QA program at the construction stage of WNP-2, not the operating stage of WNP-1. Petitioner's only reference to Unit 1 is a conclusory statement that it has "reviewed all WNP-1 Inspection Reports and concluded that Applicant's repeated QA/QC failures do not generate one ray of hope for compliance with quality assurance requirements in the future" (CFSP Supplement, p. 12). This statement is vague and unsupported and does not constitute adequate basis for the contention. Unless Petitioner can identify specific instances of QA breakdown at

WNP-1, this contention does not meet the specificity requirements of 10 CFR § 2.714.

Alleged QA/QC problems are also set forth as a basis for CFSP Contention 20. If CFSP wants to litigate the construction defects resulting from QA/QC breakdowns specifically as they relate to the areas identified in that basis (welding, electric cable installation and worker qualification) relevant language should be added to CFSP Contention 5. With regard to the issue of worker training, also raised in Contention 20, CFSP does not meet the specificity requirements of 10 CFR § 2.714 by failing to identify the personnel categories which it alleges have been inadequately trained.

CFSP Contention 6

Petitioner contends that Applicant has not demonstrated the ability to remove decay heat from WNP-1 using natural circulation in the event of an accident and thus violates GDC 34 & 35 of 10 CFR 50 Appendix A[.]

The Staff does not object to the admission of Contention 6, provided the scope of the contention is limited to the issues stated in the bases supporting the contention. The contention and bases meet the specificity requirements of 10 CFR § 2.714. These issues are: (1) Whether Applicant has shown that the emergency feedwater system is safety grade (II.E.1.1, II.E.1.2 of NUREG-0737); (2) Whether the reactor coolant pumps and "boiler-condenser" mode of natural circulation meet the criteria of GDC 34 and 35; (3) Whether the hot leg vents will have the capability to reduce steam voiding sufficiently to allow natural circulation; and (4) Whether the "feed and bleed" mode of cooling is reliable.

As a basis for this contention Petitioner relies upon the consideration of natural circulation in an NRC proceeding, Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), ALAB-708, 16 NRC ____ (December 29, 1982), and by the NRC Staff. While this may be a basis for admission of CFSP Contention 6 at this juncture, since Petitioner has no other basis for this contention, the resolution of these issues in the eyes of the Appeal Board and the NRC Staff will moot Petitioner's concern.

CFSP Contention 7

Petitioner contends that the improvements proposed by the Applicant to the Power Operated Relief Valve and Safety & Relief Valves will not meet the requirements of NUREG-0737 and 10 CFR Part 50 Appendix A, GDC 14 and the defense-in-depth principle of the Commission.

Staff objects to this contention on the grounds that it does not specifically identify an item in NUREG-0737 which has not been complied with or any item in NUREG-0737 which is insufficient. For the contention to be admissible, it must clearly state (1) the nexus of the issue to the TMI accident, (2) the significance of the issue, and (3) the difference between the intervenor's position and the Commission's rationale in considering the TMI-related requirements. Pacific Gas & Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 & 2), LBP-81-5, 13 NRC 226 (1981), at 234-5. See also Further Commission Guidance for Power Reactor Operating Licenses: Revised Statement of Policy, CLI-80-42, 12 NRC 654 (December 18, 1980) (Revised Policy Statement).

The first basis for this contention states that the PORV and safety relief valves should be made fully safety grade, but cites no NRC

requirement that they be so or any special circumstances unique to WNP-1 why those valves should exceed the guidance of NUREG-0737. Petitioner alleges noncompliance with II.K.3.2 of NUREG-0737, which does not require that PORV and safety relief valves should be made safety grade. Petitioner does not state with specificity how item II.K.3.2 has not been complied with.

CFSP Contention 8

Petitioner contends that methods proposed by Applicant to meet instrumentation for detection of inadequate core cooling, NUREG-0737, are inadequate.

The Staff objects to the admission of CFSP Contention 8. As stated above, for the contention to be admissible a petitioner should clearly state: (1) the nexus of the issue to the TMI-accident; (2) the significance of the issue, and (3) the difference between petitioner's position and the Commission's rationale in considering the TMI related requirements. See Diablo Canyon, 13 NRC 226 at 234-5; Revised Policy Statement, supra. Petitioner has not met these requirements.

Petitioner has failed to demonstrate any nexus between the requirement imposed by the Licensing Board on the TMI facility and the WNP-1 facility. The fact that the requirement was imposed in another facility does not supply the requisite nexus.

The Staff also opposes the basis for the contention which alleges that Applicant's methods do not comply with the regulatory guides. Applicants are free to select other methods to comply with general design criteria than strict adherence to regulatory guides or staff positions. The general design criteria of the regulations are intended to provide

engineering goals rather than precise tests by which reactor safety can be measured. Petition for Emergency and Remedial Action, CLI-798-6, 7 NRC 400, 406-07 (1978). Thus, this basis does not provide a litigable issue.

CFSP Contention 9

Petitioner contends that there are systems, equipment and components classified as non-safety that were shown in the accident at TMI-2 to have a safety function or an adverse effect on safety and that such systems should be required to meet safety-grade criteria. Moreover, Applicant should be required to perform an analysis to identify all such systems, equipment and components.

The Staff objects to the admission of CFSP Contention 9 on the grounds that it lacks the requisite specificity. First, Petitioner has not identified any statutory or regulatory basis to establish that 10 CFR Part 50, Appendix A requires the analysis requested by Petitioners. Second, no special circumstances have been identified, nor have any specific interactions been identified to form the basis of a proper contention. See Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ASLBP No. 82-471-02 (September 13, 1982) (unpublished), slip op. at 8-10; Diablo Canyon, LBP-81-27, 14 NRC 325 at 331 (1981). The contention is so vague that parties will not know what they will have to defend against or oppose. Peach Bottom, supra, at 20. CFSP Contention 9 fails to provide that information and it should be rejected.

As noted above, a board is not authorized "to admit conditionally for any reason, a contention that falls short of meeting the specificity requirements". Catawba, supra, slip op. at 11. The NRC Rules of Practice do not permit the fleshing out of vague, unparticularized contentions through discovery. Id. at 13.

CFSP Contention 10

Petitioner contends that the B & W Once through Steam Generator (OTSG) design used for WNP-1 is overly sensitive to secondary side perturbations and has not been adequately analyzed (sic) as required by 10 CFR 50 Appendix A.

The Staff does not oppose the admission of Contention 10, provided the scope of the contention is limited to the issues stated in the bases for the contention. The contention and bases meet the specificity requirements of 10 CFR § 2.714. The issues stated in the bases are :

(1) Whether the Applicant has addressed the significance of data showing that (a) B & W plants have an excess of reactor trips caused in part to (sic) minor secondary side transients, (b) undercooling transients are more likely in plants with the sensitive OTSG, and (c) overcooling transients are also more likely in the B & W design following a reactor trip; and (2) Whether the Applicant discussed the long and short term safety significance of the entry point of the Auxiliary Feedwater System to the steam generators.

CFSP Contention 11

Petitioner contends that the Applicant has not shown that safety-related (electrical and mechanical) equipment and components are environmentally qualified to a degree that would provide adequate assurance that the requirements of GDC 2 and 4 of 10 CFR 50 Appendix A are satisfied.

The Staff objects to Contention 11 as vague and grounded upon bases which are in part objectionable.

General Design Criteria 4 in Appendix A to 10 CFR Part 50 requires, in part, that safety-related structures, systems and components be designed to withstand environmental conditions associated with normal

operation and accident conditions. GDC 2, however, pertains to design bases for protection against natural phenomena and thus the reference is improper.

A final Environmental Qualification rule was approved by the Commission on January 6, 1983 and will be published in the Federal Register shortly. The rule requires that applicants for operating licenses that are to be granted prior to November 30, 1985 perform an analysis to ensure that the plant can be operated safely pending completion of equipment qualification and submit the analysis to the Director of Nuclear Reactor Regulation (NRR) before the license is granted. 10 CFR § 50.49(i). Applicants for operating licenses are not required to demonstrate compliance with the final rule until March 31, 1985 at the earliest. The Director of NRR can extend this deadline to November 30, 1985 and, in exceptional cases, the Commission can grant extensions beyond the November 30, 1985 deadline. As a result, there is no deadline for the environmental qualification of equipment that it is within the authority of the Licensing Board to enforce. Consequently, this contention does not pose a litigable issue.

In the first paragraph of the bases, CFSP challenges the adequacy of accelerated aging testing methods used by the Applicant for environmental qualification. The bases for the contention lack the requisite specificity required by 10 CFR § 2.714. CFSP alleges that the effect of radiation on polymers used in seals, rings, gaskets and cable insulation and jackets has been underestimated. However, CFSP has not identified a particular piece of mechanical or electrical equipment which it contends will not be adequately qualified.

As an additional basis for the contention, CFSP alleges that the Applicant is required to meet the criteria in Regulatory Guides 1.70 and 1.89. Regulatory guides are neither regulations nor the only acceptable method of meeting a specific regulatory requirement. Solutions different from those in the guides are acceptable if they provide a basis for findings requisite to issue the license. River Bend, ALAB-444, 6 NRC 760, 772-73 (1977). Thus, the Staff objects to admitting this basis as part of Contention 11, if CFSP is attempting to require compliance with these regulatory guides.

In addition, IE Bulletin 79-01B, which CFSP alleges Applicant has not met, applies only to operating reactors. Since compliance with the bulletin is not relevant to WNP-1, this basis is also objectionable.

CFSP Contention 12

Petitioner contends that Applicant has not provided reasonable assurance that the Asiatic clam (Corbicula fluminea) and other aquatic debris will not befoul the intake/discharge structure of WNP-1 in both normal and emergency operating conditions, thus endangering the public health and safety.

The Staff does not object to the admission of Contention 12. The wording of the contention and the bases given meet the specificity requirements of 10 CFR § 2.714. As a result of IE Inspection Report 50-460/82-03, the Applicant informed the NRC that Corbicula have been found in the Columbia River. The issues that may be litigated under this contention should be limited to those set forth in the bases. Thus, the issues CFSP may litigate are: (1) whether the Applicant has adequately quantified the existence and density of Corbicula in the vicinity of the

WNP-1 intake structure, (2) whether the design of the WNP-1 intake structure and the surveillance procedures and control methods used by the Applicant are adequate to prevent Corbicula and other aquatic debris from clogging the intake/discharge structure and (3) whether the Applicant has adequately assessed the effect of the low river flow established by the Federal Power Commission on the collection of aquatic debris upon the intake structure.

CFSP Contention 13

Petitioner contends that the Babcox and Wilcox Emergency Core Cooling System (B&W ECCS) Model relied upon by Applicant does not meet the requirements of 10 CFR 50.46, Appendix K of Part 50 or GDC 35.

The Staff does not object to the admission of Contention 13 provided the scope of the contention is limited to the issues raised in the nonobjectionable bases supporting the contention (i.e., whether the B&W small break loss-of-coolant accident (SBLOCA) model conforms to 10 CFR Part 50, Appendix K and NUREG-0660 and -0737). The first basis asserted with respect to Contention 13 is objectionable. CFSP alleges that the B&W ECCS Model is inadequate because it did not predict the TMI-2 accident. Operator error and interference, contributing causes to the TMI-2 accident,^{*/} could not be predicted by any model. As a second basis for the contention, CFSP notes that the adequacy of the B&W SBLOCA ECCS model is being considered in a NRC proceeding, Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), ALAB-708, 16 NRC ____ (December 29, 1982), and by the NRC Staff. While this observation may

^{*/} Three Mile Island, A Report to the Commissioners and to the Public, Vol. I, at 4 (Rogovin Report).

provide a basis for the admission of Contention 17 at this juncture, the resolution of the issue in the eyes of the TMI Appeal Board and the NRC Staff will moot the Intervenor's concerns because CFSP has not set forth any independent basis for its position that the model is inadequate.

Third, the Staff does not object to admitting the last sentence of the bases as an issue for litigation under Contention 13. However, when the Applicant fully responds to item II.E.2 of NUREG-0660 and II.K.3.30 of NUREG-0737, the issue will be moot.

CFSP Contention 14

Petitioner contends that the fire protection measures at WNP-1 do not meet the requirements of 10 CFR 50.48, Appendix R to Part 50, and GDC 3 in that Applicant has not demonstrated that redundant systems, equipment and components necessary for safety will not be damaged in the event of a fire.

Contention 14 as drafted is broad, vague and is not supported by specific bases. Thus, it is inadmissible. It is unclear whether the phrase "necessary for safety" is used to express a concern about all systems important to safety or just those required to maintain safe shutdown. Without being more specific, Intervenor asserts a broad challenge regarding the adequacy of a large number of systems.

The Commission's fire protection requirements and fire damage limits are set forth in 10 CFR 50.48, Part 50, Appendix A, GDC 3 and Appendix R. Appendix R establishes the requirements for fire protection systems. CFSP has not identified which redundant safety systems are inadequate. CFSP also has failed to identify a requirement that fire pumps, the only piece of equipment identified in the bases, are required to be categorized as safety grade and have environmental and seismic qualification. Therefore,

the Staff objects to the admission Contention 14 because it lacks the requisite specificity under 10 CFR § 2.714.

CFSP Contention 15

Petitioner contends that Applicant has not met the requirements of NUREG-0737 II.K.2.9, II.E.5.2(f) and I&E Bulletin 79-27 by not completing a plant-specific Failure Mode and Effects Analysis (FMEA) of the Integrated Control System for WNP-1.

The Staff objects to the admission of Contention 15 on the grounds that it does not pose a litigable issue. In addition, NUREG-0737 item II.E.5.2(f) is nonexistent.

Under item II.K.2.9, B&W operating license applicants are required to submit documentation of the FMEA analysis four months prior to the expected issuance of the NRC staff safety evaluation reports. As a result of the up to five year deferral in construction, the Staff review of the WNP-1 operating license application is proceeding on a manpower available basis and presently there is no schedule for the issuance of the Staff safety evaluation report. Since the Applicant would not be required to perform the analysis until some future date, there presently is no issue for the Board to decide and the contention may not be admitted because it is premature.

CFSP Contention 16

Petitioner contends that the Emergency Diesel Generators as designed and installed are unreliable as a source of on-site emergency power necessary for safety. Failure of the diesel generators should be considered a design basis accident.

The Staff objects to the admission of Contention 16 on the grounds that it constitutes a challenge to the regulations and the bases stated are

inadequate. The requirements for onsite power systems, of which diesel generators are a part, are set forth in 10 CFR Part 50, Appendix A, GDC-17. Included in GDC-17 is the single failure criterion used in nuclear plant design. Accordingly, there is no NRC requirement that the simultaneous loss of both diesel generators be considered a design basis event. To that extent, the contention is a challenge to the regulations and thus inadmissible. 10 CFR §2.758(a).

There were special circumstances that caused the failure of both diesel generators (i.e., station blackout), to be considered as a probable design basis event in Florida Power & Light Co. (St. Lucie Power Plant, Unit No. 2), ALAB-603, 12 NRC 30, 32 (1980). CFSP has not stated information which is sufficient to establish a nexus between the circumstances at St. Lucie and WNP-1. In addition, the Commission has stated that ALAB-603, does not establish generic guidelines for determining design basis events nor does it establish station blackout as a design basis event. St. Lucie, CLI-81-12, 13 NRC 838, 844 (1981).

As an additional basis for this contention, CFSP states that defects exist in the generators, the motors in the generators lack environmental and seismic qualification and the diesel generator panel has not been qualified. This basis raises the issue of whether certain equipment has been qualified. CFSP has joined the issue of design basis accidents for WNP-1 with environmental and seismic qualification of diesel generators and their components. However, this basis should not be admitted as an issue for litigation under Contention 16 because it is not within the scope of the contention. In addition, as discussed in response to Contention 11, the new environmental qualification rule does not require a demonstration

of compliance with the rule until March 1985 at the earliest. Thus, the Applicant is not required to qualify its equipment on a schedule other than that set forth in the rule.

CFSP Contention 17

Petitioner contends that WNP-1 Seismic Category 1 systems, components, and equipment, during a seismic event at the site, at or below the SSE, would fail in such a manner as to prevent safe shutdown of the plant. Such a failure violates GDC 2 and presents an undue risk to the public health and safety. Furthermore the Architect/Engineer's response spectra is wholly defective and can not be relied upon for a seismic analysis.

The Staff does not object to the admission of Contention 17 provided the scope of the contention is limited to issues stated in the bases supporting the contention and the specific equipment identified therein. The issues stated in the basis are: (1) whether the as-built seismic capability of the cable tray supports is substandard, (2) whether the Applicant has used Quality Class II equipment in place of Quality Class I as required for seismic category I systems, components and equipment with respect to pipe rupture restraints, cable trays and the containment purge system, (3) whether the Applicant has completed a program to assure snubber operability, (4) whether the Applicant has provided Reg. Guide 1.70 critical damping values, (5) whether the Applicant has identified adequate seismic analysis methods to verify pipe support based plate flexibility and the design of structural steel framing for platforms that support safety-related systems in the containment; 6) whether the Applicant has provided adequate design and analysis procedure to verify the adequacy of the containment; 7) whether there are adequate soil damping values for

structures, systems and components in the nuclear steam supply system (NSSS), (8) whether the electrical equipment listed in FSAR Appendix 3.11B has been seismically qualified, (9) whether the Architect/Engineer's amplified response spectra is reliable for HVAC equipment and modified structural steel framing; and (10) whether the Applicant has performed an adequate dynamic analysis of ASME class piping.

CFSP Contention 18

Petitioner contends that Applicant has failed to conduct an adequate assessment of the interactivity of WNP-1 and surrounding nuclear/chemical facilities including the ability (of WNP-1 or the other facilities) to continue safe operation in the event of an accident (at WNP-1 or the other facilities) and the consequences of loss of operability as required by 10 CFR 51.20 and 10 CFR 100.10.

The Staff objects to the admission of Contention 18 on the grounds that it is very broad and ambiguous. It alleges that (1) the Applicant's accident assessment is inadequate because it does not assess the interaction of WNP-1 and surrounding facilities (i.e., each facility's ability to operate safely), (2) the WNP-1 design is inadequate to withstand accidents at other facilities; and (3) the Applicant's operating procedures and emergency plans are inadequate to respond to these accidents.

If admitted as presently drafted, the parentheticals used in the contention would place into controversy the ability of non-NRC licensed facilities to operate safely in the event of an accident at WNP-1. The NRC does not have jurisdiction to consider, particularly in an operating license proceeding, the ability of surrounding non-nuclear facilities to operate safely in the event of an accident at WNP-1. The only pertinent

consideration is the ability of WNP-1 to operate safely in the event of an accident at nearby nuclear and chemical facilities. Thus, the ambiguity in Contention 18 is objectionable.

If the scope of the contention were properly narrowed in accordance with the six items listed in the bases, the Staff would not find the contention objectionable. Hence, CFSP's contention should be narrowed to read that WNP-1 has not been designed to withstand the effects of: (a) an explosion at the Department of Energy's Fast Flux Test Facility; (b) potential hazards from military overflights; (c) an aircraft collision into a power line tower; (d) an accident at a N-reactor which is located approximately 18 miles away; (e) the PUREX facility which is scheduled to operate in 1984; and (f) the transportation of potentially dangerous radioactive materials on a mainline railroad track within the exclusion area of WNP-1.

In the third sentence of the bases, CFSP alleges that the Applicant's emergency plans are inadequate to respond to the six emergencies listed in the bases. As a basis for the assertion, CFSP refers to Chapter 2 of the Applicant's FSAR. See CFSP Supplement at 27, 28. Because the Applicant's emergency plans are in a separate document and are not located in Chapter 2 of the FSAR, the Staff objects to perceived deficiencies in sections of the FSAR forming a basis for an emergency planning contention. In addition, apart from the conclusory statement found in the third sentence of the bases, CFSP has neither identified any perceived deficiency in the Applicant's emergency plans nor referenced any sections of the WNP-1 plan as a basis for Contention 18. Consequently, there is no basis to litigate the adequacy of the Applicant's emergency

plan under Contention 18 and the Board may not redraft the contention so as to make it broader in scope than the bases provided. See Perry, supra at 1114-1116.

CFSP Contention 19

Petitioner contends that the emergency plans proposed by Applicant are insufficient to assure that adequate protective measures can and will be taken in the event of a radiological emergency as required by 10 CFR 50.33, 50.47, 50.54 and Appendix E to Part 50.

The Staff objects to the admission of Contention 19 because it seeks to litigate both on-site and off-site planning and the bases supporting the contention primarily pertain to off-site planning issues. Because off-site emergency plans have not been developed, admission of a contention challenging the sufficiency of the plans would be premature and any basis speculative. See Catawba, supra at 18 n.17. CFSP will have an opportunity to raise contentions regarding the adequacy of off-site planning at WNP-1 when the State and local plans are filed if it can demonstrate either that the contentions are wholly based on information in those plans or that a balancing of the five factors listed in 10 CFR § 2.714(a)(1) favors the admission of the contentions.

In the bases supporting Contention 19, CFSP primarily cites to portions of the Applicant's FSAR (i.e., Chapter 2) which are not relevant to emergency planning to support the assertion that the population information around the site is inadequate. Bases which raise inadequacies regarding the description of the population surrounding the site, evacuation routes, travel time estimates, the exact size of the 10 and 50 mile EPZ, agreements with surrounding State, Federal and local entities, public education and notification procedures, shelter for surrounding

populations, etc., all concern off-site planning, and as such are objectionable as speculative and should not be admitted until off-site plans are filed so that the contention may be sufficiently specific.

See Catawba, supra at 13-14. Similarly, the Intervenor's assertion (CFSP Supplement at 31) that the Applicant does not intend to meet with the State of Oregon on a timely basis is speculative.

In addition, CFSP asserts bases that would impose requirements beyond NRC regulations and are thus objectionable. CFSP's statement that the 10-mile EPZ should be larger for pregnant women and children (CFSP Supplement at 32) is an impermissible challenge to the regulations under 10 CFR § 2.758(a). Radiation doses to these populations were considered when the Commission developed the 10-mile EPZ. In addition, there was no significant increase in the rate of infant mortality within ten miles of TMI-2. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), LBP-81-59, 14 NRC 1211, 1593-95 (1981); ALAB-697, 16 NRC _____ (October 22, 1982) slip op. at 36-37. Thus, this basis is also factually incorrect.

As an additional basis for the contention, CFSP claims that the Applicant's emergency plans should be tested by means of a full scale exercise. See CFSP Supplement at 33. This basis is also an impermissible challenge to the regulations because boards may not require NRC or FEMA findings regarding the state of off-site emergency preparedness prior to the issuance of an operating license for up to 5 percent of full power. 10 CFR § 50.47(d). Similarly, full-scale exercises are part of preoperational inspection and are required prior to operation above 5% of rated power, but the exercises are not required for a Licensing Board, Appeal Board or Commission licensing decision. 47 Fed. Reg. 30232 (July 13, 1982).

The remaining basis stated by CFSP is that the Applicant has not met the requirements of NUREG-0814 and NUREG-0696. These NUREGS comprised interim guidelines and have been superceded. Generic Letter 82-33, dated December 17, 1982 from Director of Division of Licensing enclosing NUREG-0737, Supplement 1. Consequently, failure to meet the interim guidelines may not form the basis for an emergency planning contention.

The Staff would not object to Contention 19 if it is limited to on-site planning regarding specific allegations which are contained in the basis supporting the contention. The Staff also recommends that the subparagraphs of the regulations cited are added--50.33(g) and 50.54(s).

CFSP Contention 20

Petitioner contends that there is no reasonable assurance that WNP-1 will be completed on a timely basis and that the project has not been constructed "in conformity with the construction permit and the application as amended, the provisions of the Act, and the rules and regulations of the Commission" as required by 10 CFR Part 2, Appendix A, VIII(b)(1). Numerous deficiencies, both known and unknown, exist in the construction of WNP-1 such that its operation would cause an undue risk to the public health and safety. The halt in construction, in addition to the previously existing delays, will prevent completion of the project on a timely basis. Continued conformance with the construction permit by Applicant is unlikely due to inadequate measures at the present and into the future, taken to protect the portions of the plant that are already built and the systems that are already installed.

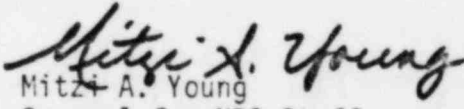
With the exception of the last sentence, this contention should be rejected as vague, broad and, in many respects, repetitive. The Intervenor seeks to litigate whether the Applicant can complete the plant on a timely basis and whether the Applicant can adequately implement a QA program. These issues were raised previously under Contentions 1 and 5 (see discussions regarding Contentions 1 and 5, supra). Accordingly, the Staff suggests that CFSP Contentions 1, 5 and 20 be combined or at least be grouped for litigation in this proceeding.

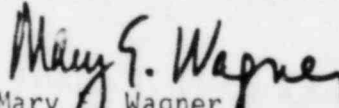
The only new issue contained in Contention 20 is the adequacy of measures taken to preserve the plant during the up to five year deferral period anticipated at WNP-1. The contention and the basis provided do not meet the specificity requirements of 10 CFR §2.714. CFSP has not identified at least one specific instance of degradation at the site which could not be easily remedied and could pose a significant risk to the public health and safety. The sole defect cited in the Commission trip report was the partial corrosion of threads in holes for studs in the vessel flange. However, the Intervenor failed to mention that the Applicant intends to remedy the situation by reboring the holes. Memorandum to File from E. Abbot regarding Trip to WPPSS 1, 2, and 4, dated December 17, 1982, at 2. The Staff objects to the admission of the contention because CFSP has failed to identify specific systems that are not being adequately protected.

III. CONCLUSION

For the reasons stated above, the NRC Staff opposes the admission of CFSP Contentions 1-3, 5, 7-9, 11, 14-16, and 18-20. The Staff does not oppose the admission of contentions 4, 6, 10, 12, 13, and 17.

Respectfully submitted,


Mitzi A. Young
Counsel for NRC Staff


Mary E. Wagner
Counsel for NRC Staff

Dated at Bethesda, Maryland
this day of January, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
WASHINGTON PUBLIC POWER SUPPLY SYSTEM) Docket Nos. 50-460 CPA, OL
(WPPSS Nuclear Project No. 1))

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the above-captioned matter. In accordance with § 2.713(b), 10 C.F.R. Part 2, the following information is provided:

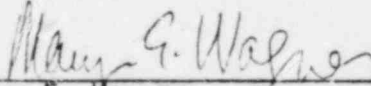
Name: - Mary E. Wagner

Address: - U.S. Nuclear Regulatory Commission
Office of the Executive Legal Director
Washington, DC 20555

Telephone Number: - (301) 492-8650

Admissions: - New York Court of Appeals
United States District Court of the
Southern District of New York
United States District Court for the
Eastern District of New York
District of Columbia Court of Appeals

Name of Party: - NRC Staff
U.S. Nuclear Regulatory Commission
Washington, DC 20555



Mary E. Wagner
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 24th day of January, 1983

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Docket No. 50-460 OL

Mitzi A. Young
Mitzi A. Young
Counsel for NRC Staff